IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY, OHIO

STATE OF OHIO, *ex rel.*
DAVE YOST
ATTORNEY GENERAL OF OHIO
30 East Broad Street, 25th Floor
Columbus, OH 43215

Plaintiff,

v.

E.I. DU PONT DE NEMOURS AND CO.
c/o CT Corporation System
Registered Agent
4400 Easton Commons Way, Suite 125
Columbus, OH 43219

and

THE CHEMOURS COMPANY
c/o CT Corporation System
Registered Agent
4400 Easton Commons Way, Suite 125
Columbus, OH 43219

Defendants.

Case No. 180T32

AMENDED COMPLAINT WITH JURY DEMAND

Plaintiff the State of Ohio, on relation of Ohio Attorney General Dave Yost, for its Amended Complaint against Defendants, E.I. du Pont de Nemours and Co. and The Chemours Company, alleges as follows:

INTRODUCTION AND NATURE OF THE ACTION

1. The State of Ohio is the owner in trust of public lands, waters, and resources within its political boundaries, and has a duty to protect and preserve those natural resources. The State also works to protect the health, safety, and welfare of the citizens of Ohio. Ohio brings this action to redress contamination by Defendant E. I. du Pont de Nemours and Company ("DuPont") of

Ohio's natural resources with a toxic substance, perfluorooctanoic acid ("PFOA"), which has caused significant damages and poses a significant ongoing threat to Ohio's natural resources and the citizens of Ohio.

2. DuPont has caused widespread PFOA contamination in Ohio as a result of decades-long, intentional releases of massive amounts of PFOA into the environment. Indeed, DuPont freely admits that it discharged PFOA into the environment from its Washington Works manufacturing facility directly across the Ohio River, near Parkersburg, West Virginia ("the Washington Works Plant" or "the Plant").

3. PFOA is a synthetic chemical compound that does not exist in nature. Human exposure to PFOA – even at very low levels – has been linked to kidney and testicular cancer, thyroid disease, pregnancy-induced hypertension and low birth weight, high cholesterol, and ulcerative colitis. PFOA is also a known toxicant and carcinogen in animals. The U.S. Environmental Protection Agency (the "U.S. EPA") has recognized that PFOA is extremely persistent in the environment, in both water and soil, and resistant to typical environmental degradation processes.

4. In Ohio, PFOA is a serious and immediate threat to a wide swath of the State. Widespread sampling has revealed the presence of PFOA at levels that threaten the entire ecosystem across the Mid-Ohio River Valley. In addition, the presence of PFOA in drinking water and Ohio's natural resources directly threatens the health and safety of tens of thousands of Ohio residents.

5. Indeed, research released by the University of Cincinnati in 2017 (the "2017 University of Cincinnati Study") confirms that residents of the Mid-Ohio River Valley had elevated levels of PFOA based on blood serum samples collected between 1991 and 2012. The

study area stretched along both sides of the Ohio River, spanning parts of West Virginia, through Kentucky and Ohio, to Indiana. Researchers found "widespread exposure" among study participants and concluded that their primary exposure source was likely drinking PFOA-contaminated water sourced from the Ohio River and the Ohio River Aquifer. As the 2017 University of Cincinnati Study recognizes, the three known industrial discharges of PFOA into the Ohio River are from the Washington Works Plant and two of DuPont's landfills. PFOA contamination is known to persist hundreds of miles downstream of contamination sources.

6. Indeed, PFOA has been found in the Ohio River at multiple points downstream from the Washington Works Plant, including as far as Hamilton County. PFOA has also been found in Ohio groundwater, surface water, soils, and biota. Numerous counties in Ohio are potentially affected by PFOA, including, at a minimum, every county that borders the Ohio River.

7. Ohio therefore brings this action to hold DuPont and Defendant The Chemours Company ("Chemours") liable for the consequences of DuPont's releases of hundreds of thousands of pounds of PFOA into Ohio. From 1951 through 2013, DuPont used PFOA and/or ammonium perfluorooctanoate ("APFO") in making fluoroproducts, including "Teflon", at the Washington Works Plant.[1] For decades, DuPont knew that PFOA was toxic to humans and the environment. Despite this knowledge, DuPont intentionally released vast quantities of PFOA into the air, lands, and waters around the Plant for approximately 60 years. DuPont knowingly contaminated soil, groundwater, surface waters, and drinking water supplies in Ohio with PFOA via aerial emissions and discharges into the Ohio River from the Plant. DuPont also disposed of

[1] APFO is comprised of both PFOA, an acidic anion, and an ammonium cation. When in contact with water, APFO dissociates to PFOA. The term "C-8" is sometimes used to refer to both APFO and PFOA. The U.S. EPA has used the terms "APFO", "C-8", and "PFOA" interchangeably, and noted that "PFOA" is used to indicate perfluorooctanoic acid along with its ammonium salt, APFO. As used herein, "PFOA" refers to perfluorooctanoic acid, APFO, and C-8.

PFOA-containing waste at several sites in Ohio. Yet DuPont has refused to invest in systems that would reduce PFOA emissions or replace PFOA with more environmentally safe materials.

8. DuPont intentionally concealed the dangers of PFOA from governmental entities and the public at large in order to protect its profits and avoid public responsibility for injuries and damage caused by its toxic product. DuPont's intentional and reckless actions have contaminated the natural resources of Ohio and have put Ohio residents at risk. Through this action, Ohio seeks to recover all past and future costs to investigate, remediate, and restore lands and waters of the State contaminated by PFOA discharged and emitted from DuPont's Washington Works Plant or otherwise disposed of by DuPont in Ohio. In its own right and in its capacity as trustee for the public, the State of Ohio seeks to abate the public nuisance created by DuPont's PFOA, and seeks damages for injuries to Ohio resulting from the contamination.

9. DuPont sought to avoid the massive liabilities associated with the discharge of PFOA at Washington Works and elsewhere by "spinning off" its performance chemical business, and creating a new, separate, publicly-traded company– Chemours – which assumed DuPont's performance chemical operations, including those at Washington Works. DuPont caused Chemours to assume certain of DuPont's historic liabilities, including those associated with DuPont's discharge of PFOA. But DuPont ensured that Chemours was not adequately capitalized and would be unable to satisfy the massive liabilities that it assumed. As set forth below, the Chemours spinoff, including approximately $4 billion that Chemours paid to DuPont, gives rise to claims for actual and constructive fraudulent transfer.

PARTIES

Plaintiff

10. Plaintiff, the State of Ohio, brings this action by and through Attorney General Dave Yost. By virtue of his office, Attorney General Yost is the chief legal officer for the State of Ohio. The State holds natural resources within its political boundaries, including air, lands, and waters of Ohio, in trust for the benefit of its citizens. Ohio works to safeguard the health, safety, and welfare of the citizens of Ohio and owes a duty to its citizens to protect and preserve natural resources located within its boundaries. As *parens patriae*, the State may sue to protect its interest in the health and well-being – both physical and economic – of its residents.

11. The State of Ohio also has significant property interests in the lands and waters of Ohio, including direct ownership interests in state parks, wildlife areas, and other lands directly owned by the State, as well as a sovereign interest in protecting the quality of those lands and waters. The contamination of lands and waters of the State by PFOA constitutes an injury to Ohio. Ohio seeks damages for this injury in its capacity as *parens patriae*.

Defendants

12. Defendant DuPont is incorporated under the laws of Delaware with its principle place of business at 1007 Market Street, Wilmington, Delaware.

13. Defendant Chemours is incorporated under the laws of Delaware with its principle place of business in Wilmington, Delaware.

14. After the dangers of PFOA began to be publicized, DuPont announced its intention to spin off its "performance chemicals" business, which manufactures fluoroproducts using PFOA, into a new publicly traded company. The spin-off to DuPont shareholders was completed on July 1, 2015 and, as set forth in more detail below, Chemours assumed the operations, assets, and certain limited liabilities of DuPont's performance chemicals business.

15. Although Chemours assumed and agreed to indemnify DuPont for certain liabilities related to the performance chemicals business, the two companies have entered into an agreement to share liabilities for claims arising from environmental releases of PFOA from the Washington Works Plant, as well as potential PFOA liabilities that might arise in the future. Chemours has publicly refused to accept liability for punitive damages awarded because of DuPont's egregious conduct described herein.

16. This Amended Complaint refers to DuPont and Chemours collectively as "Defendants."

JURISDICTION AND VENUE

17. The environment, natural resources, and public trust property that are the subject of this suit are located within the State of Ohio.

18. Venue is appropriate in Washington County under Rules 3(B)(5) and (6) of the Ohio Rules of Civil Procedure because a portion of the property that is the subject of this action is located there and part of the claim for relief arose in Washington County. Property contaminated by DuPont's PFOA is located throughout the State of Ohio, including Washington County. The property and injury in question involves, without limitation, groundwater, surface water, land, wildlife, and other natural resources in Washington County and all other counties in Ohio that border the Ohio River.

FACTUAL ALLEGATIONS

DuPont's Use and Releases of PFOA at the Washington Works Plant

19. The Washington Works Plant is the largest Chemours production facility. This 1,200-acre facility sits along the Ohio River in Wood County, West Virginia, and includes Blennerhasset Island, located upstream of the site in the Ohio River. Construction of the Plant's

first manufacturing units was completed in 1948. Since it opened, the Plant has expanded to include the manufacture of hundreds of products.

20. Since the early 1950s, in connection with its manufacturing operations at the Plant, DuPont used PFOA and/or materials that contain, incorporate, and degrade into PFOA. By 1951, DuPont was purchasing large quantities of PFOA for use in its manufacture of specific fluoropolymers – commercially branded by DuPont as Teflon – at the Plant. DuPont employees referred to PFOA internally as "C-8." DuPont began to manufacture its own PFOA in 2001.

21. DuPont used powdered (or dry) PFOA in its fluoropolymer manufacturing processes at the Plant until the late 1980s and used liquid PFOA thereafter. PFOA was present in the air emissions, liquid discharges, and solid residues generated by these processes. DuPont used PFOA at the Plant until 2013.

DuPont's Knowledge of PFOA's Toxicity to Humans and the Environment

22. For more than 60 years, DuPont negligently, recklessly, intentionally, and maliciously allowed, caused, or permitted PFOA to be discharged, vented, emitted, or otherwise released from the Plant into the environment at, under, or in the vicinity of the Plant, including into air, soil, sediment, and water within the territory of the State of Ohio.

23. For more than 60 years, DuPont was aware that the operations and equipment used at the Plant would release PFOA into the environment. As early as 1966, DuPont was aware that PFOA could leach into groundwater. Despite this knowledge, DuPont negligently, recklessly, intentionally, and maliciously conducted its operations and used equipment without installing available control or abatement equipment capable of reducing damage and injuries to human health and the environment.

24. By 1961, DuPont's own researchers had concluded that PFOA was toxic and, according to its Toxicology Section Chief, should be "handled with extreme care." During the 1960s, DuPont had knowledge that PFOA had adverse liver reactions in dogs and rats.

25. By 1976, DuPont was aware of research reports that detected organic fluorine in blood bank samples in the United States, which the researchers believed to be a potential result of human exposure to PFOA.

26. In 1978, DuPont's Medical Director authorized a plan to review and monitor the health conditions of potentially exposed workers in order to assess whether any negative health effects could be attributed to PFOA exposure. This monitoring plan involved obtaining blood samples from the workers and analyzing them for the presence of organic fluorine content.

27. Also in 1978, DuPont's Medical Director authored and published an article ("the 1978 Article") that acknowledged that DuPont had "a duty to report health hazards" and thus "should disclose health-hazard information," and that to "lay all the facts on the table" was "the only responsible and ethical way to go," as "[t]o do less would be . . . morally irresponsible."[2]

28. By 1979, DuPont possessed data indicating that its workers who were exposed to PFOA had a significantly higher incidence of health issues, including abnormal liver function, as compared to unexposed workers. By that same year, DuPont was aware of the results of a study that concluded that primates died when subjected to PFOA. DuPont failed to report this data, or the results of its worker health status analysis, to any government agency or community near any of its manufacturing facilities that used, handled, or released PFOA.

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[2] In sworn deposition testimony in 2004, DuPont's former Medical Director acknowledged that DuPont's duty to report potential health hazards from materials it uses, as previously described in the 1978 Article, extends to the communities in which DuPont's plants are located.

29. By 1980, DuPont had confirmed internally that PFOA "is toxic," that "people accumulate [PFOA]," and "continued exposure is not tolerable."

30. In 1981, DuPont possessed a document that described the results of a blood sampling study that DuPont conducted on pregnant or recently pregnant employees who worked at the Plant ("the 1981 Plant Pregnancy Study"). The goal of the study was to determine if "[p]regnancy outcome among female Washington Works employees is causally related to their occupational exposure to [PFOA]."

31. DuPont collected information, including blood results, from female Plant employees and their babies. The Plant doctor also interviewed those employees. Eight of the women participating in the 1981 Plant Pregnancy Study worked or had worked with fluoropolymers and were either pregnant or had given birth in the previous two years. Among the seven children born by the time of the study, two – *twenty-nine percent* – had birth defects in their eyes or facial area. The results showed that the women had significantly elevated levels of PFOA in their blood, and umbilical cord blood from at least one of the babies was tested and found to contain PFOA. These results demonstrated that PFOA can cross the placenta from an exposed mother to her child in gestation.

32. By the end of 1981, at the latest, DuPont was aware that PFOA was being released from the Plant into the surrounding air, and that these PFOA air emissions escaped the boundaries of the Plant itself.

33. In March 1982, the results of a rat study confirming that PFOA would cross the placenta if present in maternal blood were reported to the U.S EPA. At the same time, however, DuPont concealed the results of its own 1981 Plant Pregnancy Study from EPA and the general public, which showed that PFOA would cross the placenta in humans.

34. In November 1982, DuPont's Medical Director noted that DuPont did not have adequate "knowledge of the chronic health effects from long-term exposure to low levels of" PFOA and recognized that PFOA "is retained in the blood for a long time." The Medical Director warned that there "is obviously great potential for current or future exposure of members of the local community from emissions leaving the Plant perimeter," and recommended that "available practical steps be taken to reduce this exposure."

35. By 1983, DuPont had started evaluating the concentration of PFOA in the Ohio River caused by the Plant's operations and had begun conducting ground-level modeling for potential levels of PFOA discharged into the air from the Washington Works Plant. DuPont did not disclose its data or results to the U.S. EPA, State governmental agencies, or the general public.

36. By 1984, DuPont began a program involving the covert collection of tap water samples sourced from public drinking water supplies near the Plant. DuPont asked Plant employees to collect the samples from local businesses or their own homes. DuPont then analyzed these samples internally to assess their PFOA content. DuPont developed a method for analyzing water samples and assess their PFOA content with a detection limit of 0.6 parts per billion ("ppb") or 600 parts per trillion ("ppt").

37. In 1984, DuPont's internal analyses of the tap water samples collected near the Plant indicated that PFOA was present in public water sources in both Ohio – specifically, from the Little Hocking Water Association ("LHWA") – and West Virginia. DuPont was also aware that the well field for the LHWA public water supply was located *upstream* from any effluent discharged to the Ohio River from the Plant; in fact, it was located in the prevailing wind direction from the Plant, indicating that PFOA was being released from the Plant through the air. Yet

DuPont did not disclose its data or results to the U.S. EPA, State governmental agencies, or the general public.

38. In 1984, after obtaining this data about PFOA contamination in Ohio, DuPont held a meeting at its corporate headquarters in Wilmington, Delaware to discuss health and environmental issues related to PFOA (the "1984 Meeting"). DuPont employees who attended the 1984 Meeting discussed available technologies that were capable of controlling and reducing PFOA emissions from its manufacturing facilities, as well as potential replacement materials capable of eliminating additional PFOA emissions from its operations. DuPont chose not to use either, despite knowing of PFOA's toxicity, because it wanted to save money.

39. During the 1984 Meeting, DuPont employees in attendance spoke of the PFOA issue as "one of corporate image, and corporate liability." They discussed DuPont's "incremental liability from this point on if we do nothing as we are already liable for the past 32 years of operation." They also stated that "legal and medical will likely take the position of total elimination" of PFOA and had "no incentive to take any other position." A memo discussing the 1984 Meeting also notes that there were "detectible levels" of C-8 in the Little Hocking, Ohio drinking water system. DuPont did not disclose the information discussed at the 1984 meeting to the U.S. EPA, State governmental agencies, or the general public.

40. By the mid-1980s, DuPont was aware that PFOA is biopersistent and bioaccumulative. In addition to its Medical Director's observation in 1982 that PFOA was "retained in the blood for a long time", an internal DuPont document from 1989 confirms that the company was aware that PFOA accumulated in human blood.

41. On several occasions between 1984 and 1991, DuPont collected more water samples from public water sources near the Plant, including sites thought to be served by LHWA

in Ohio, and analyzed their PFOA content. During each of these sampling events, PFOA was detected in the water of at least one public water supply, including the Lubeck Public Service District ("LPSD"), whose wells were downstream from the Plant's ongoing releases of PFOA into the Ohio River. DuPont measured PFOA at levels up to 3.9 ppb.[3] In 1985, DuPont reported to the EPA that PFOA was detected at parts-per-billion levels in the groundwater aquifer under the DuPont Local Landfill.

42. In a memorandum dated October 20, 1986, DuPont employees stated that DuPont's management in Wilmington, Delaware was "concerned about the possible liability resulting from long-term C-8 exposure to its employees and to the population in the surrounding communities ... down river from the [Washington Works] plant."

43. Despite all of the above knowledge, DuPont not only decided to keep using PFOA, but actually *increased* its use at the Plant throughout the 1980s. DuPont did not want to discontinue its use of PFOA – despite its clear danger to human health and the environment – because doing so would have jeopardized hundreds of millions of dollars in annual profits.

44. During the mid-1980s, DuPont continued to find evidence of the toxicity of PFOA to humans and animals. In 1985 and 1986, researchers from DuPont's Haskell Laboratory for Toxicology and Industrial Medicine published two studies on the toxicity of PFOA. One study found PFOA to be "moderately toxic", producing "an increase in liver size and corneal capacity" in rats exposed by inhalation to PFOA; the other studied dermal toxicity in rats and rabbits and found skin irritation in both rats and rabbits, and increased liver size in rats. By 1988, DuPont was

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[3] When it became apparent that PFOA had contaminated the LPSD public water supply, DuPont arranged to purchase the LPSD well-field property so it would become concealed as part of the Plant site rather than tell the LPSD customers that their water had been contaminated. Further, in 1989, DuPont helped LPSD to relocate several miles further away from the Plant.

aware that at least one toxicity study performed on laboratory rats revealed a relationship between PFOA exposure and increased rates of certain types of cancer, including testicular cancer. That same year, DuPont possessed data showing that, for the years 1956 through 1983, observed levels of kidney and testicular cancer were higher than expected for male employees at the Plant.

45. By January 1987, DuPont had completed a "fenceline" screening survey of chemicals emitted into the atmosphere from the plant, and calculated C-8 emissions to the atmosphere to be 0.0048 mg/m^3 at the property line. That same year, DuPont's Medical Director told DuPont that the Plant needed to place the "highest priority" on issues relating to the presence of PFOA outside the Plant boundaries. In 1988, DuPont classified PFOA as a confirmed animal carcinogen and possible human carcinogen and its scientists first recommended a community exposure guideline ("CEG") of no more than 0.6 ppb PFOA in drinking water for community residents, which it rounded up to a recommended no more than 1 ppb PFOA in water. This 0.6 ppb (rounded up to 1 ppb) CEG was the lowest level of PFOA DuPont could detect in water at the time.

46. Despite DuPont's knowledge of PFOA's potential toxicity and carcinogenicity, and its concern that PFOA's toxicity could expose the company to significant liability, DuPont continued – through the rest of the 1990s and into the 2000s – *increasing* its use of PFOA at the Plant and *increasing* the amount of PFOA wastes that it discharged from the Plant directly into the Ohio River, the air, and unlined, non-hazardous waste landfills in the vicinity of the Plant. All the while, DuPont knew this would result in continuing and increasing releases of PFOA into the air, the underlying water table, and nearby surface waters.

47. By 1991, DuPont had formally adopted its 1 ppb CEG (first recommended in 1988) and had collected additional water samples from public water supplies near the Plant, which were

analyzed by or on behalf of DuPont at its own laboratory. These analyses showed levels of PFOA well above 1 ppb, with levels as high as 2.7 ppb. Despite detecting these levels, which were nearly *triple* DuPont's own CEG, DuPont decided not to release or disclose that information to anyone outside the company.

48. In 1999, members of the Tennant family – whose cattle were dying from consuming PFOA-contaminated water from the Dry Run Creek – sued DuPont in a lawsuit brought in West Virginia federal court styled *Tennant, et al., v. E.I. du Pont de Nemours & Co., Inc.*, Civil Action No. 6:99-0488 (S.D. W.Va.) (the "*Tennant* case").

49. That same year, DuPont received data from an additional laboratory study on the effects of PFOA exposure on primates that showed that two of twenty-two monkeys had died, including one that had received the lowest dose of PFOA. Upon information and belief, DuPont never released or reported this data to governmental entities or the public.

50. Despite DuPont's knowledge of the potential toxicity of PFOA, including the confirmed carcinogenic nature of PFOA in animals, an internal memorandum regarding DuPont's litigation strategy shows that DuPont sought to "not create [the] impression that DuPont did harm to the environment" and wanted to "keep the issue out of the press as much as possible."

51. In or around 2000, DuPont's corporate management authorized, approved, and began direct manufacturing of PFOA at a DuPont facility in North Carolina, despite DuPont's decades-long knowledge of the toxicity of PFOA.

52. By June 2000, DuPont was aware that the American Council of Governmental and Industrial Hygienists had designated PFOA as a "confirmed animal carcinogen."

53. In the late summer of 2000, as the *Tennant* case moved toward trial, the plaintiffs discovered, among other things, that DuPont knew that PFOA had been present in the Dry Run

Landfill and Dry Run Creek for years, that PFOA was present in nearby drinking water supplies, and that DuPont's internal health and safety studies demonstrated risks to human health from PFOA exposure.

54. In November 2000, one of DuPont's in-house counsel handling PFOA issues wrote to his co-counsel: "We are going to spend millions to defend these lawsuits and have the additional threat of punitive damages hanging over our head. Getting out in front and acting responsibly can undercut and reduce the potential for punitives. . . . Our story is not a good one, we continued to increase our emissions into the river in spite of internal commitments to reduce or eliminate the release of this chemical into the community and the environment because of our concern about the biopersistence of this chemical."

55. On May 7, 2001, Bernie Reilly, DuPont's in-house counsel responsible for PFOA issues, wrote that DuPont's technique for measuring PFOA "has very poor recovery, often 25%, so any results we get should be multiplied by a factor of 4 or even 5. However, that has not been the practice, so we have been telling the agencies results that surely are low. Not a pretty situation, especially since we have been telling the drinking water folks not to worry, results have been under the level we deem 'safe' of 1 ppb. We now fear we will get data from a better technique that will exceed the number we have touted as safe."

56. In August 2001, a new class action lawsuit was filed in West Virginia state court against DuPont arising from PFOA contamination of drinking water supplies near the Plant, styled *Leach, et al. v. E.I. du Pont de Nemours & Co.*, Civil Action No. 01-C-608 (Wood Cty. W. Va. Cir. Ct.) (the "*Leach* case").

57. Between late 2001 and 2003, DuPont orchestrated efforts to generate a new federal- or state-approved "screening level" for PFOA in drinking water supplies through the creation of a

"C-8 Assessment of Toxicity Team" ("CAT Team"). The proposed "screening level" was intended to be significantly higher than DuPont's own CEG of 1 ppb. DuPont intended to present the "screening level" as proof that there were no health risks based on the level of PFOA in drinking water supplies near the Plant.

58. In 2002, the CAT Team announced a new "screening level" for PFOA in drinking water of 150 ppb – *150 times higher* than the 1 ppb CEG DuPont continued to use through at least October 2013. Afterwards, DuPont repeatedly cited the 150 ppb screening level in communications intended for public dissemination. DuPont then cited this new, higher screening level as establishing that levels of PFOA in drinking water near the Plant were completely safe and posed no risk of harm or injury to people.

59. In August 2003, DuPont co-authored a report, as part of the Groundwater Investigation Steering Team with the West Virginia Department of Environmental Protection, confirming that air emissions from the Plant were a source of PFOA found in public water supplies near the Plant. The report notes that "[a]ir emissions of [PFOA] from the Washington Works Facility are believed to be the source of [PFOA] in areas of West Virginia located adjacent to the facility and the Local Landfill" and that "[a]ir emissions of [PFOA] from the [P]lant are believed to be the source for [PFOA] along the Ohio River upstream of the [P]lant." DuPont's own outside consultants later confirmed in published, peer-reviewed literature that "particulate deposition from [the Plant's] air emissions to soil and the subsequent transfer of the chemical through the soil was determined to be the most likely source of PFOA that was detected in groundwater".

60. Beginning in 2003, DuPont paid various consultants, including The Weinberg Group, thousands of dollars to implement a comprehensive strategy to attack and discredit those who alleged adverse health effects from PFOA, to prevent third parties from connecting DuPont

to PFOA health problems, to coordinate media and third-party communications, and to thwart any PFOA-related litigation.

61. In February 2003, DuPont's Plant manager made knowingly false and misleading statements to the media, including an Ohio newspaper, that: "[i]n more than 50 years of [PFOA] use by [DuPont] and others, there have been no known adverse human health effects associated with the chemical," that "all" of the available scientific research "has been provided to both state and federal regulators," that "epidemiological studies of workers do not indicate an increased risk of cancer associated with exposure to [PFOA]," that "[DuPont] has made significant efforts to respond to the public honestly and openly with correct information about [PFOA]," and that "the use of [PFOA] at the Washington Works site has not posed a risk to either human health or the environment."

62. Later, in March and April of 2003, various DuPont employees and executives – including its Vice President and General Manager of Fluoroproducts, the Director of its Haskell Laboratory, its spokesperson for the Plant, and its CEO – made public statements denying that DuPont had seen any negative impacts on human health or the environment caused by DuPont's use of PFOA.

63. In 2004, the U.S. EPA filed a complaint against DuPont for violations of the federal Resource Conservation and Recovery Act and Toxic Substances Control Act based on DuPont's failure to disclose PFOA toxicity and exposure information to the U.S. EPA. DuPont eventually settled the action by agreeing to pay over $16 million in civil administrative penalties and supplemental environmental projects. The U.S. EPA characterized this settlement as the "largest civil administrative penalty EPA has ever obtained under any federal environmental statute."

64. DuPont's own Epidemiology Review Board ("ERB") repeatedly raised concerns about DuPont's habitual and intentional practice of stating through press releases, website postings, and other forms of public communication that there were no adverse health effects associated with human exposure to PFOA. In June 2005, DuPont reported to the press that "no human health effects are known to be caused by PFOA." An ERB member called that statement "[s]omewhere between misleading and disingenuous." In February 2006, the ERB "strongly advise[d] against any public statements asserting that PFOA does not pose any risk to health" and questioned "the evidential basis of [DuPont's] public expression asserting, with what appears to be great confidence, that PFOA does not pose a risk to health."

65. In October 2006, in direct opposition to ERB's advice, DuPont's chief medical officer issued a false and misleading press release stating that "there are no health effects known to be caused by PFOA." An ERB member criticized the press release because it "appear[ed] written to leave the impression 'don't worry'."

66. In March 2009, DuPont reviewed and approved the issuance of a press release by one of its consultants, the Sapphire Group, which boldly and falsely proclaimed that PFOA in drinking water was completely safe. DuPont knew these statements to be false, and it knew that it was continuing to release PFOA from the Plant into Ohio.

67. In May 2016, the U.S. EPA announced Drinking Water Health Advisories for PFOA and the related compound perfluorooctanesulfonic acid ("PFOS") of 70 ppt (or 0.07 ppb).[4]

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[4] The U.S. EPA develops health advisories to provide information about substances that can cause human health effects and are known or anticipated to occur in drinking water. The U.S. EPA's health advisories are based on the best available peer-reviewed studies of the effects of PFOA and PFOS on laboratory animals and were also informed by epidemiological studies of human populations that have been exposed to PFAS. The U.S. EPA determined that these studies indicate that exposure to PFOA and PFOS above certain levels can cause adverse human health effects, including development effects to unborn persons during pregnancy or to breastfed infants (*e.g.*, low birth weight, accelerated puberty, and skeletal variations), cancer (*e.g.*, testicular and kidney), liver effects (*e.g.*, tissue

Despite the stringency of EPA's newly-announced guidelines, recently proposed and adopted state standards suggest they may still not be strict enough.

68. In June 2018, the Agency for Toxic Substances and Disease Registry ("ATSDR") of the U.S. Department of Health and Human Services released a draft report that included a minimum risk level ("MRL", *i.e.*, the amount of a chemical a person can eat, drink, or breathe each day without a detectable risk to health) for PFOA and PFOS. ATSDR releases its MRLs in dosage amounts, not in terms of concentrations in drinking water. In November 2018, ATSDR released guidance on the conversion from its dosage amounts to drinking water exposures, which are equal to, for the most vulnerable populations, 21 ppt (or .021 ppb) for PFOA and 14 ppt (or .014 ppb) for PFOS.

DuPont's Releases of PFOA Continue to Affect Ohio and Its Residents

69. Humans may be exposed to PFOA through various pathways, including by ingesting contaminated drinking water, inhaling PFOA that is emitted into the air, or by direct physical contact with soil, products and materials that contain PFOA.

70. In June 2005, January 2006, and May 2006, a majority of the PFOA Review Panel of the U.S. EPA Science Advisory Board issued reports that described PFOA as a "likely" human carcinogen.

71. In May 2008, West Virginia University scientists reported preliminary findings about PFOA's negative impact on the human immune system. These preliminary findings were based on data collected as part of the "C8 Health Project"[5] and included findings that:

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damage), immune effects (*e.g.*, antibody production and immunity), thyroid effects, and other effects (*e.g.*, cholesterol changes).

[5] The "C8 Health Project" was established as part of a settlement in the *Leach* case. The purpose of the C8 Health Project was to collect health data from the class action members, including the amount of PFOA in class members' blood, and to enable the court-appointed Science Panel to confirm the presence or absence of a "probable link" between PFOA exposure and human disease. The study area included the Little Hocking, Belpre, Tuppers-

- Higher PFOA levels in West Virginia and Ohio residents are associated with higher levels of two enzymes that can indicate liver damage, and also with lower levels of a protein that is an important part of the body's defense against infection.

- West Virginia scientists also reported preliminary findings suggesting that elevated PFOA levels in children are associated with high cholesterol levels and that thyroid function was clearly affected in PFOA-exposed people.

72. In a report published in December 2009, researchers associated with the C8 Health Project noted that blood serum concentrations were 500% higher among study participants than results found in previous studies for a representative population in the United States. Study participants from the LHWA water district had the highest levels of PFOA, followed by those using private wells in Ohio and West Virginia.

73. Relying on the data collected from approximately 69,000 people through the C8 Health Study Project as well as other data, an independent panel of three epidemiologists, jointly selected by DuPont and local residents and known as the "C8 Science Panel," announced between December 2012 and July 2013 that it had confirmed probable links between human exposures to PFOA and kidney cancer, testicular cancer, ulcerative colitis, thyroid disease, pregnancy-induced hypertension, and high cholesterol.

74. The 2017 University of Cincinnati Study, which was the first to examine PFOA serum concentrations in U.S. residents in the 1990s, found blood serum levels of PFOA at higher than normal background levels among residents of the Mid-Ohio River Valley, suggesting that potentially tens of thousands of Ohio residents could have elevated levels of PFOA in their blood.

Plains Chester, and Pomeroy public water districts in Ohio, as well as two districts in West Virginia and eligible private wells.

Contamination of Ohio's Natural Resources Caused by DuPont's Releases of PFOA

75. In addition to threatening the safety, health, and welfare of Ohio residents and communities in the Mid-Ohio River Valley, DuPont's decades-long releases of PFOA into the environment continue to threaten the ecosystem and natural resources throughout the broad swath of Ohio that borders the Ohio River. The U.S. EPA has recognized that PFOA is extremely persistent in the environment, in both water and soil, and is resistant to environmental degradation. PFOA has been found in a number of species, including fish, land and marine mammals, and birds. The presence of PFOA in air, soil, or water can cause changes in community and ecosystem structure and function. DuPont's releases include, but are not limited to:

- Venting PFOA into the air;
- Disposing of waste containing PFOA into unlined landfills; and
- Discharging PFOA into other pathways that connect the Plant to water (*e.g.*, the Ohio River, and land in Ohio, and air pathways).

76. All told, DuPont discharged at least 150,000 pounds of PFOA into the Ohio River from the Plant during the 1980s, and at least 350,000 pounds of PFOA during the 1990s. DuPont did so despite its own internal 1991 memorandum directing that PFOA should not be discharged to surface water, and instructions from its supplier, 3M, not to do so. Upon information and belief, DuPont discharged more than 80 percent of its PFOA input back into the environment.

77. PFOA has been found in five Ohio public water supplies that draw water from the Ohio River Buried Valley Aquifer in Washington and Meigs Counties, along the Ohio River, as well as nearly 100 private drinking water wells in the vicinity of Little Hocking, Ohio.

78. Testing results taken from Ohio water districts in the Mid-Ohio River Valley at various times have showed PFOA levels as high as 18.6 ppb (Little Hocking), 0.248 ppb (City of Belpre), 0.705 ppb (Village of Pomeroy), 0.726 ppb (Tuppers Plains-Chester Waster District), and

0.491 (Village of Syracuse). Samples taken from test wells in the LHWA wellfields showed levels of PFOA as high as 37.1 ppb, and groundwater samples from test borings in the LHWA wellfields showed levels of PFOA as high as 78 ppb. In addition, sampling of untreated water from several Ohio public water systems performed in 2017 indicated levels of PFOA in excess of both federal and state health advisory levels.

79. In August 2002, DuPont reported the results of testing done on private water supplies in Ohio within two miles of the Washington Works facility. For drinking water wells then in use, PFOA was found at up to 8.59 µg/L (or 8.59 ppb). For non-drinking water wells and unused wells, PFOA was found at up to 16.9 µg/L. The highest concentration found was 23.6 µg/L, in a spring used for livestock.

80. In the 2017 University of Cincinnati Study, researchers found that "[s]ignificant associations between serum PFOA and tap water consumption, the Ohio River and Ohio River Aquifer strongly suggest drinking water is a predominant PFOA exposure source" for residents of the Mid-Ohio River Valley.

81. PFOA also persists in soil in Ohio. Historical sampling done on soil in the LHWA wellfields also showed significant amounts of PFOA, at levels greater than 100 ug/kg (or 100 ppb). In one boring, PFOA was found in the concentration of 18 ug/kg at 21 feet below the ground surface.

82. In October 2009, LHWA conducted a pilot study of grass and tree samples from the LHWA wellfields. PFOA was found in all of the samples analyzed. The study noted that relatively high concentrations of PFOA in tree leaves as opposed to grass suggested long term exposures in trees, and found it probable that deep soils (where trees root) are more heavily contaminated with PFOA.

83. Samples of surface water, soils, and sediments taken in 2018 confirmed that Ohio's natural resources are widely contaminated with PFOA, at levels that present a risk to human health and the environment, and that the contamination extends for many miles from Washington Works. PFOA contamination is also pervasive among Ohio state lands in the affected area, including numerous parks, forests, and wildlife areas.

84. As noted above, sampling has also confirmed PFOA at detectible levels in the Ohio River. Sampling done in 2002 found PFOA downstream of the Washington Works facility in concentrations up to 1.09 µg/L (or 1.09 ppb), while 31 of the 34 samples taken upstream of the facility were non-detect for PFOA. In 2005, in response to reports about DuPont's Washington Works Plant, Greater Cincinnati Water Works found PFOA in a concentration of 100 ppt in the Ohio River, and has continued monitoring the levels thereafter.

The Fraudulent Spinoff of DuPont's Performance Chemicals Business

85. By the 2000s, DuPont sought to insulate itself from billions of dollars in liabilities arising from PFOA contamination not only from Washington Works, but also at other chemical plants that it owned and operated throughout the country.

86. For more than five decades, DuPont manufactured, produced, or utilized PFOA and other per- and polyfluoroalkyl substances ("PFAS") not only at Washington Works, but also at other plants in New Jersey and North Carolina. As alleged above, throughout this time, DuPont was aware that PFOA was toxic, harmful to animals and humans, bioaccumulative, and biopersistent in the environment. DuPont also knew that it had emitted and discharged PFOA in large quantities into the environment, and that tens of thousands of people had been exposed to PFOA, including through public and private drinking water supplies, which DuPont had contaminated.

87. More than 3,500 personal injury claims were filed against DuPont in Ohio and West Virginia following the 2005 settlement in the *Leach* case and the findings of the C8 Science Panel. These claims were consolidated in the federal multidistrict litigation styled *In Re: E.I. du Pont de Nemours and Company C-8 Personal Injury Litigation* (MDL No. 2433) in the United States District Court for the Southern District of Ohio. Forty "bellwether" personal injury trials were scheduled to take place in 2015 and 2016.

88. Thus, DuPont knew, or reasonably should have known, that it faced billions of dollars in liabilities arising from its use of PFOA at Washington Works, as well as liability related to PFOA contamination at other sites throughout the country, and that its liability was likely billions of dollars.

89. DuPont sought to limit its liability related to PFOA by engaging in a series of restructuring transactions, starting with the "spinoff" of its performance chemicals business (which included Teflon and other products, the manufacture of which involved the use of PFOA and other PFAS) into Chemours, and continuing through the merger with The Dow Chemical Company, the transfer of DuPont's historic assets away from "old" DuPont, the transfer of such assets to other DowDuPont entities and, ultimately, the spin-off of "old" DuPont to a new parent company named Corteva, Inc. On information and belief, "old" DuPont was reorganized – and its assets were reshuffled – in order to shield tens of billions of dollars in assets from the PFAS liabilities DuPont tried to quarantine in Chemours.

90. Chemours was incorporated on February 18, 2014 under the name "Performance Operations, LLC." On April 10, 2014, the company was renamed to "The Chemours Company, LLC". On April 30, 2015, company was converted from a limited liability company to a

corporation with the name "The Chemours Company." Prior to July 1, 2015, Chemours was a wholly-owned subsidiary of DuPont.

91. On July 1, 2015, DuPont completed the spinoff of its performance chemicals business (the "Spinoff") through the creation of Chemours, which became a separate, publicly traded entity.

92. To effectuate the Spinoff, DuPont and Chemours entered into a June 26, 2015 Separation Agreement (the "Separation Agreement"). At the time of the Spinoff, the performance chemicals business consisted of DuPont's Titanium Technologies Chemical Solutions and Flourochemicals segment (collectively, the "Performance Chemicals Business").

93. Pursuant to the Separation Agreement, DuPont agreed to transfer to Chemours all businesses and assets related to the Performance Chemicals Business, including 37 active chemical plants. Upon information and belief, Washington Works was one of the 37 sites referenced in the Separation Agreement and one or more schedules to that Agreement.

94. Upon information and belief, DuPont completed a significant internal reorganization prior to the Spinoff, so that all the assets and liabilities (held by DuPont or its subsidiaries) that DuPont deemed to be part of the Performance Chemicals Business would be held by Chemours.

95. In addition to the assets transferred to Chemours, DuPont caused Chemours to assume DuPont's historical liabilities arising from DuPont's discharge of PFOA into the environment. While specific details about the liabilities are set forth in non-public schedules that are not available to Plaintiff, the Separation Agreement required Chemours to assume what the agreement defines as "Chemours Liabilities," which includes DuPont's historic liabilities regardless of (i) when or where such liabilities arose, (ii) whether the facts upon which they are

based occurred prior to, on or subsequent to the effective date of the Spinoff, (iii) where or against whom such liabilities are asserted or determined, (iv) whether arising from or alleged to arise from negligence, gross negligence, recklessness, violation of law, fraud, misrepresentation by DuPont or Chemours, and (v) which entity is named in any action associated with any liability.

96. The Separation Agreement defines Chemours Liabilities broadly, to include "any and all Liabilities relating . . . primarily to, arising primarily out of or resulting primarily from, the operation or conduct of the Chemours Business, as conducted at any time prior to, at or after the Effective Date . . . including . . . any and all Chemours Assumed Environmental Liabilities. . . .," which includes DuPont's historic liabilities relating to and arising from its decades of emitting PFOA into the environment from Washington Works and elsewhere.

97. Chemours also agreed to indemnify DuPont in connection with those liabilities that it assumed. The indemnification has no cap or temporal limitation.

98. Chemours also agreed to use its best efforts to be fully substituted for DuPont with respect to "any order, decree, judgment, agreement or Action with respect to Chemours Assumed Environmental Liabilities . . . ."

99. Upon information and belief, there was no meaningful, arms-length negotiation of the Separation Agreement. Indeed, when the Separation Agreement was signed, Chemours was a wholly owned subsidiary of DuPont, and a majority of the Chemours board consisted of DuPont employees.

100. In connection with the Spinoff, Chemours paid DuPont approximately $3.9 billion, consisting of approximately $3.4 billion in cash, plus approximately $507 million in promissory notes. Chemours also transferred all of its stock to DuPont, which was ultimately delivered to DuPont's shareholders. In order to fund the $3.9 billion payment, Chemours issued unsecured

senior notes and entered into a credit agreement with a syndicate of banks to provide two senior secured credit facilities, incurring a total of $4 billion in indebtedness.

101. Chemours was thinly capitalized following the Spinoff. Shortly after the Spinoff, market analysts described Chemours as "a bankruptcy waiting to happen" and a company "purposely designed for bankruptcy."

102. According to Chemours' unaudited pro forma financial statements, as of March 31, 2015 (but giving effect to all of the transactions contemplated in the Spinoff), Chemours had total assets of $6.4 billion and total liabilities of $6.3 billion. Following the Spinoff, Chemours issued a 10-K stating that, as of December 31, 2015, Chemours had assets totaling $6.3 billion and total liabilities of $6.2 billion.

103. The 10-K stated that these liabilities include $454 million in "other accrued liabilities," which included $11 million for accrued litigation and $68 million for environmental remediation. The 10-K also stated Chemours had $553 million in "other liabilities," which included $223 million for environmental remediation and $58 million for accrued litigation.

104. However, Chemours significantly underestimated its liabilities, including the liabilities that it had assumed from DuPont with respect to PFOA, which DuPont and Chemours knew or should have known would be billions of dollars. Had Chemours taken the full extent of these liabilities into account, as it should have done, it would have had negative equity (that is, liabilities that are greater than assets) and been balance sheet insolvent.

105. The allegations set forth in the paragraphs 1 through 104 above are hereby incorporated into each Count of this Amended Complaint as if fully restated therein.

COUNT ONE
NEGLIGENCE

106. At all times relevant to this Amended Complaint, Defendants negligently caused the contamination of the environment, including but not limited to air, soil, surface water, sediments, biota, and groundwater at and around the Plant and failed to timely, fully, and adequately warn or notify Ohio of the contamination.

107. The presence and hazards of PFOA in the environment were foreseeable, known, or obvious to Defendants but were not known to or obvious to Ohio or its citizens.

108. At all times relevant to this Amended Complaint, Defendants had a duty, among other things, to:

(a) take adequate and timely precautions to prevent the PFOA from being released and contaminating the environment and nearby properties, including the air, soil, surface water, sediments, biota, and groundwater in Ohio;

(b) remove the PFOA from the air, soil, surface water, sediments, biota, and groundwater, including the contamination at and about the Plant;

(c) adequately and timely warn federal, state, and local regulators and authorities, and potentially affected members of the public, of the presence of, and threats posed by releases of PFOA into the environment; and

(d) handle, treat, store, and dispose of PFOA in a manner that would not create a nuisance or an imminent and substantial endangerment of human health or the environment.

109. Defendants breached the aforementioned duties.

110. Defendants also owed a duty to Ohio to operate the Washington Works Plant in a manner that would not violate applicable legal requirements, including *inter alia*, Ohio's Water Pollution Control Act, Ohio Rev. Code § 6111 *et seq.*, Ohio's Air Toxic's requirements, Ohio

Admin. Code § 3745-114-01, and Ohio's Public Nuisance Statute, Ohio Rev. Code § 3767 *et seq.*, as well as West Virginia's Air Pollution Control Act, W. Va. Code § 22-5-1 *et seq.*, West Virginia's Water Pollution Control Act, W. Va. Code § 22-11-1 *et seq.*, West Virginia's Groundwater Protection Act, W. Va. Code § 22-12-1 *et seq.*, and West Virginia's Solid Waste Management Act, W. Va. Code §§ 22-15-1 *et seq.* Defendants' violations of these statutes and rules constitute negligence *per se* and/or *prima facie* negligence.

111. Defendants' conscious disregard for the rights of Ohio and the safety of its citizens has caused and continues to cause substantial harm to Ohio, and the property and natural resources it holds in trust for its citizens, and will likely cause substantial harm in the future.

112. As a proximate result of Defendants' negligent, wanton, and reckless acts or omissions, natural resources in Ohio have been contaminated by PFOA and Ohio has suffered and will continue to suffer damages as described herein.

113. Defendants are liable for all direct and consequential damages as described *infra* (including, *inter alia*, past and future costs, special damages, and punitive damages).

COUNT TWO
PUBLIC NUISANCE

114. Defendants have caused and threatened to cause, and continue to cause and threaten to cause, the environmental contamination by allowing PFOA to enter into the air, soil, sediments, biota, surface water, and groundwater and property held in trust by Ohio, rendering these natural resources unfit for their uses.

115. Ohio was and is entitled to the full use and enjoyment of the natural resources it holds in trust for its citizens. These natural resources include, among other things, air, soil, sediments, biota, surface water, and groundwater. Ohio and its citizens have been deprived of the use and enjoyment of its natural resources by Defendants' acts and omissions.

116. Defendants' acts and omissions affect a substantial number of people who use these public trust natural resources for commercial, subsistence, passive use and recreational purposes, and interferes with the rights of the public to clean and safe natural resources and the environment, including but not limited to the right to safe, uncontaminated drinking water.

117. The presence of PFOA causes inconvenience and annoyance to the people of Ohio. An ordinary person would be reasonably annoyed or disturbed by the presence of PFOA, which endangers the health of animals, biota and humans, and degrades water quality and wildlife habitats.

118. The gravity of the environmental and human health risks created by Defendants' conduct and Defendants' concealment of the dangers to human health and the environment far outweigh any social utility of Defendants' conduct.

119. The actions of the Defendants have caused and/or allowed an unreasonable interference with the health, wealth, welfare, and property of the public and constitute a common law public nuisance for which Defendants are jointly and severally liable and subject to injunctive relief prohibiting the creation and continuance of said nuisance, and Ohio is entitled to all direct and consequential damages as described (including, *inter alia*, past and future costs, special damages, and punitive damages). Defendants also are liable for any other relief that will abate and remediate the nuisance and its short-term and long-term effects.

COUNT THREE
STATUTORY NUISANCE

120. Defendants have caused and threatened to cause, and continue to cause and threaten to cause, the environmental contamination by allowing PFOA to enter into the air, soil, sediments, biota, surface water, and groundwater and property held in trust by Ohio, rendering these natural resources unfit for their uses.

121. By their acts and omissions described herein, Defendants have violated applicable statutory and regulatory standards, including, *inter alia*, Ohio's Water Pollution Control Act, Ohio Rev. Code § 6111 *et seq.*, Ohio's Public Nuisance Statute, Ohio Rev. Code § 3767 *et seq.*, Ohio's Air Toxic's requirements, Ohio Admin. Code § 3745-114-01, and Ohio's Air Nuisance Rule, Ohio Admin. Code § 3745-15-07, as well as West Virginia's Air Pollution Control Act, W. Va. Code § 22-5-1 *et seq.*, West Virginia's Water Pollution Control Act, W. Va. Code § 22-11-1 *et seq.*, West Virginia's Groundwater Protection Act, W. Va. Code § 22-12-1 *et seq.*, and West Virginia's Solid Waste Management Act, W. Va. Code §§ 22-15-1 *et seq.*, and have caused damage or prejudice to Ohio and the public.

122. Defendants' nuisance is ongoing, and as long as the nuisance continues, Ohio's injuries and damages will continue.

123. The actions of the Defendants have caused and/or allowed an unreasonable interference with the health, wealth, welfare, and property of the public. Defendants are jointly and severally liable and subject to injunctive relief prohibiting the creation and continuance of said nuisance, and Plaintiff is entitled to all direct and consequential damages as described (including, *inter alia*, past and future costs, special damages, and punitive damages). Defendants also are liable for any other relief that will abate and remediate the nuisance and its short-term and long-term effects.

COUNT FOUR
TRESPASS

124. By the foregoing intentional conduct, Defendants caused and continue to cause PFOA to escape, invade, and contaminate air, groundwater, surface water, soils, sediments, biota, and other property held in trust by Ohio on behalf of its citizens. This contamination was or should

have been reasonably foreseeable to Defendants. Defendants intentionally contaminated Ohio's natural resources and property.

125. Ohio never authorized this invasion of its natural resources and public trust property.

126. The presence of PFOA in Ohio's natural resources and public trust property, including its air, groundwater, surface water, soils, sediments, and biota, constitutes a continuing trespass. Defendants' conscious disregard for the rights of Ohio and the safety of its citizens has caused substantial harm to Ohio, its natural resources, and its public trust property, and will very likely cause further substantial harm.

127. As a direct and proximate result of Defendants' continuing trespass and engaging in the above-mentioned activities, and the resultant releases of PFOA which trespassed upon the State's public trust property, Ohio has suffered direct and consequential damages as described (including, *inter alia*, past and future costs, loss of use of natural resources and public trust property, diminution in value of real property, special damages, and punitive damages).

COUNT FIVE
PUNITIVE DAMAGES

128. Defendants' acts and omissions as set forth above were willful, wanton, and/or grossly negligent. Furthermore, Defendants acted in the foregoing manner with conscious disregard for the safety and rights of residents of Ohio, Ohio's natural resources, and property held in trust by Ohio, which actions had a great probability of causing substantial and continuing harm.

129. The releases of PFOA were the result of willful misconduct and/or willful negligence within the privity and/or knowledge of Defendants, and were caused by, among other things, Defendants' violations of applicable environmental, safety or operating standards, regulations or laws.

130. As a direct and proximate result of Defendants' gross, willful, reckless and wanton misconduct, Ohio has suffered direct and consequential damages as described *infra*.

COUNT SIX
ACTUAL FRAUDULENT TRANSFER

131. Through its participation in the Spinoff, as detailed above, Chemours transferred valuable assets to DuPont, including the $3.9 billion dividend (the "Transfers"), while simultaneously assuming significant liabilities pursuant to the Separation Agreement (the "Assumed Liabilities").

132. The Transfers and Assumed Liabilities were made for the benefit of DuPont.

133. At the time that the Transfers were made and the Liabilities were assumed, and until the Spinoff was complete, DuPont was in a position to, and in fact did, control and dominate Chemours.

134. Chemours made the Transfers and incurred the Assumed Liabilities with the actual intent to hinder, delay and defraud the creditors or future creditors of Chemours.

135. Plaintiff has been harmed as a result of the Transfers.

136. Under Del. Code. Tit. 6 Sec. 1301 to 1312 and Ohio Rev. Code §§ 1336.01 to 1336.11, Plaintiff is entitled to avoid the Transfers and to recover property or value transferred to DuPont.

COUNT SEVEN
CONSTRUCTIVE FRAUDULENT TRANSFER

137. Chemours did not receive reasonably equivalent value from DuPont in exchange for the Transfers and Assumed Liabilities.

138. Each of the Transfers and Chemours' assumption of the Assumed Liabilities was made to or for the benefit of DuPont.

139. At the time that the Transfers were made and the Assumed Liabilities were assumed, and until the Spinoff was complete, DuPont was in a position to, and in fact did, control and dominate Chemours.

140. Chemours made the Transfers and assumed the Assumed Liabilities when it was engaged or about to be engaged in a business for which its remaining assets were unreasonably small in relation to its business.

141. Chemours was insolvent at the time or became insolvent as a result of the Transfers and its assumption of the Assumed Liabilities.

142. At the time that the Transfers were made and Chemours assumed the Assumed Liabilities, Chemours intended to incur, or believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

143. Plaintiff has been harmed as a result of the Transfers.

144. Under Del. Code. Tit. 6 Sec. 1301 to 1312 and Ohio Rev. Code §§ 1336.01 to 1336.11, Plaintiff is entitled to avoid the Transfers and to recover property or value transferred to DuPont.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the State of Ohio, prays for judgment against the Defendants, jointly and severally, as follows:

1. An award of compensatory damages, in excess of $25,000, according to proof;
2. Damages for injury to Ohio natural resources, including the economic impact to the State and its residents;
3. Any other damages, including punitive or exemplary damages, as permitted by law;

4. Award of present and future costs to clean up PFOA contamination complained of herein and to abate the nuisance created by the presence of PFOA in Ohio's natural resources and public trust property;

5. An order requiring Defendants to fund programs to detect, monitor, and study the extent and effect of PFOA exposure to Ohio residents in the affected area, and to educate the public regarding PFOA exposure;

6. An order voiding the Transfers to the extent necessary to satisfy Plaintiff's claims;

7. A declaration of Defendants' duty to indemnify Ohio for all expenditures of money the State is legally obligated to undertake in connection with PFOA contamination in Ohio;

8. Restitution damages for the profits that Defendants obtained by their tortious conduct;

9. Pre- and post-judgment interest as provided by law;

10. Costs and attorneys' fees as permitted by law; and

11. Such other relief as the Court may deem just and proper.

Respectfully submitted,

DAVE YOST
ATTORNEY GENERAL OF OHIO

Bill Markovits with telephone permission on 6/25/19

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JURY DEMAND

Plaintiff, the State of Ohio, by and through its Attorney General, Dave Yost, demands a trial by jury on all issues that are triable by a jury.

Bill Markovits with telephone permission on 6/25/19
by Timothy C. Loughry
Bill Markovits (0018514)